



Orleans Parish School Board

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September 2, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

Request for Review

Re: Docket no. 02-6

Background:

The Orleans Parish School Board (OPSB) is appealing USAC's decision not to allow OPSB to calculate its Funding Year 2008 discount percentage using the appropriate rules for a consortium. On February 2, 2010, the FCC remanded Funding Year 2008 applications 606647 and 634554 to USAC and granted OPSB's request to change the Funding Year 2007 and 2008 applications to consortium applications. In DA 10-27 the FCC stated, "We find that it is in the public interest to waive section 54.504(c) of our rules to allow NOPS to amend its applications type and be reimbursed for payments made to the service provider for Wright Middle School. Accordingly, we remand NOPS's underlying funding year 2007 and funding year 2008 FCC Form 471 applications to USAC to make this change to NOPS's applications."¹

On March 24, 2010 USAC issued FCDL's for Funding Year 2008 applications 606647 and 634554 and changed the application type to consortium.² While USAC did change the application type to consortium, it continued to calculate OPSB's discount percentage as if it were a school district application. As the FCC is well aware, the rules for calculating the discount percentage for a consortium can be found, in part, in § 54.505 (b) (4) of Part 47 of the C.F.R. Below is an excerpt from the rules:

"School districts, library systems, or other billed entities shall calculate discounts on supported services described in § 54.502 or other supported special services described in § 54.503 that are shared by two or more of their schools, libraries, or consortia members by calculating an average based on the applicable discounts of all member schools and libraries."

¹ See paragraph 31 of FCC 10-27

² See Attachment A for copy of March 24, 2010, FCDL's from USAC.

Additionally, in accordance with the Form 471 instructions (pages 20-22), the discount percentage on this application must be calculated by taking a simple average of the weighted discount percentage for the OPSB schools and the individual discount percentage for Sophie B Wright. Using the appropriate discount methodology the discount percentage for the shared services on these consortium applications should be 85% and not the 78% approved by USAC.

USAC's decision not to change the discount methodology violates FCC rules and the Form 471 instructions. Therefore, on May 12, 2010, OPSB appealed USAC's decision assuming it was a simple oversight on USAC's part.³ To our surprise the appeal was denied on July 6, 2010.⁴ Below is the rationale for USAC's decision on appeal:

"The record shows that USAC has approved these funding requests at the discount level requested by the applicant on Block 5 of their Form 471 application. The rules of this support mechanism do not allow for an increase in discount of a funding request subsequent to the completion of the Form 471. Based on FCC Order 10-27 which allowed for a modification of the Application Type, Form 471 Block 4 was revised to reflect the actual schools and associated entities that are receiving the requested service and the application type was changed to reflect Consortium. However, per FCC Order 10-27 (paragraph 28) an increase of funding (via discount) is not allowed. Therefore, increasing the shared discount as requested in your appeal is not permitted by FCC Order 10-27. Increasing the original requested discount is tantamount to requesting funds not included on the Form 471. Consequently, the appeal is denied."

We do not agree with USAC's decision for two main reasons. First, there is no program rule that prohibits "an increase in discount of a funding request subsequent to the completion of the Form 471." To the contrary as part of USAC's implementation of the Bishop Perry Order, USAC actively looks for situations where it appears the applicant has requested a lesser discount percentage than what they may be eligible to receive. Interestingly, on its 2009 application, USAC did give OPSB the appropriate discount level for a consortium, despite it not being requested on the original Form 471. Secondly, we believe USAC has incorrectly applied the direction the FCC provided in paragraph 28. In paragraph 28 of FCC 10-27 the FCC stated,

"Additionally, although RSD and NOPS seek to add schools to their funding year 2007 and 2008 FCC Form 471 applications, RSD and NOPS do not seek an increase in funding above the requested amount for any FRNs as part of their funding year 2007 FCC Form 471 applications, and we do not permit any increase in funding above the requested amount for any FRNs as part of RSD's and NOPS's funding years 2008 and 2009 FCC Form 471 applications."

OPSB did not ask USAC to increase the **pre-discount** amount beyond what was originally requested on the Forms 471. We feel USAC incorrectly inferred from the language in paragraph 28 that "an increase of funding (via discount) is not allowed." We believe paragraph 28 prohibits USAC from increasing the pre-discount amounts included in Item 23i of Block 5 of the Forms 471, which we are not requesting. OPSB and USAC do not get to choose how the discount should be calculated; rather FCC rules dictate the methodology different applicants must use to determine the appropriate discount.

Had the FCC intended paragraph 28 to require OPSB to calculate its discount as a school district rather than a consortium, then FCC 10-27 would have also waived the requirements of 54.505 (b)

³ See Attachment B for copy of OPSB's May 12, 2010 appeal to USAC.

⁴ See Attachment C for copy of USAC's July 6, 2010 ADL to OPSB

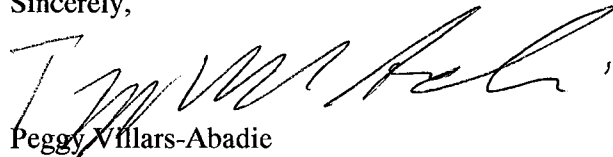
(4). At no point in FCC 10-27 did the FCC make reference to waiving 54.505 (b) (4); therefore, the order requires OPSB and USAC to comply with 54.505 (b) (4). USAC's decision not to comply with FCC rules also makes OPSB non-compliant with FCC rules and precludes OPSB from receiving support for its basic maintenance funding request that it desperately needs.

We, therefore, request the FCC direct USAC to comply with 54.504 (b) (4) and calculate OPSB's discount rate using the appropriate methodology for a consortium on FRNs 1750168, 1750274, 1750357, 1753869, 175040, and 1755106, which results in a shared discount of 85 percent as opposed to the 78 percent discount USAC approved.

We humbly request that the FCC resolve this appeal in an expedited manner. We appreciate your attention to this matter. If you have any questions regarding this appeal please contact our E-Rate consultant at the address listed below:

Andy Eisley
Consultant to OPSB
P.O. Box 370
Garrisonville, VA 22463
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Sincerely,

A handwritten signature in black ink, appearing to read 'Peggy Villars-Abadie', is written over the printed name.

Peggy Villars-Abadie
Executive Director of IT
Orleans Parish School Board